

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL NATHAN AKINS,

Defendant-Appellant.

UNPUBLISHED

January 19, 2006

No. 257772

Macomb Circuit Court

LC No. 2004-000130-FC

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of assault with intent to commit murder, MCL 750.83, discharge of a firearm into an occupied building, MCL 750.234b, discharge of a firearm from a vehicle, MCL 750.234a, and four counts of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 285 months to 80 years for each of the assault convictions, and 29 months to 4 years for each of the discharge of a firearm convictions, to be served consecutive to four concurrent prison terms of two years each for the felony-firearm convictions. He appeals as of right. Because we do not find the arguments of defendant persuasive, we affirm his convictions and sentences.

On January 28, 2004, at approximately 2:00 a.m., a shot was fired into Wild Woody's bar where employees were closing up for the night. Randy Levinsky, the head of security at Wild Woody's, and Frank Sgroi, the establishment's owner, jumped into Sgroi's Lexus automobile and chased the perpetrator who left the area on a motorcycle. Levinsky testified that he and Sgroi had followed the motorcycle to try to obtain the license plate number. They thought a customer had been shot. While they were driving, they contacted the police about their location. In total, the Lexus was hit by four bullets as it followed the motorcycle.

Levinsky testified that defendant was the shooter, and was able to identify him because Levinsky had assisted defendant in Wild Woody's earlier that evening after an altercation wherein defendant was hit with a beer bottle. Levinsky testified that when the motorcycle and Lexus turned onto Masonic Avenue, they were in close proximity to one another. Levinsky got a clear look at defendant's face when defendant raised the gun and shot at him.

Robert Stringer was the driver of the motorcycle. He had been with defendant in Wild Woody's during the altercation earlier that evening. At trial, Stringer testified that he was driving the motorcycle when defendant shot at the Lexus. Stringer explained that, after the

altercation earlier that evening, he and defendant went to Stringer's apartment. Defendant wanted to go back to Wild Woody's bar because he was upset about an earlier altercation, and he wanted to reclaim items he had left in the coat check. Defendant brought a gun with him when they returned to the bar, and when he left, defendant pulled the gun out and started shooting.

On appeal, defendant first argues that there was insufficient evidence to support his convictions for assault with intent to murder. When reviewing the sufficiency of the evidence in a criminal case, we "view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). All conflicts with regard to the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Furthermore, we resolve credibility conflicts in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and reasonable inferences drawn from that evidence may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Assault with intent to murder requires "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing a murder." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999), citing *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Defendant claims that there was insufficient evidence that he possessed an "actual intent to kill." The facts show the contrary. The intent to kill may be proved by inference from the facts in evidence. *Id.* "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Id.* In this case, defendant was aware that he was being followed and he continued to fire shots at Levinsky and Sgroi. Additionally, the evidence revealed that defendant exited the motorcycle at one point in time, positioned himself in the roadway facing the oncoming Lexus, and fired directly at it. One of the bullets shattered the Lexus's windshield, inches from Levinsky. Two others hit the hood of the vehicle. The testimony, viewed in a light most favorable to the prosecution, was sufficient to support an inference that defendant intended to kill Levinsky and Sgroi.

Defendant additionally argues that the prosecutor did not meet his burden of disproving self-defense beyond a reasonable doubt and thus, his convictions for assault with intent to murder must be reversed. In *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993), this Court held that, once evidence of self-defense is introduced, the prosecutor bears the burden of disproving that claim beyond a reasonable doubt. See also *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). The first requirement of a claim of self-defense or defense of others is that the defendant acted in response to an assault. *City of Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). The defendant must have an honest and reasonable belief that his life is in imminent danger or that there is a threat of serious bodily harm. *Fortson, supra* at 19-20. He must try to avoid the use of deadly force if he can safely do so by applying nondeadly force or utilizing an avenue of retreat. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002).

Viewing the evidence in a light most favorable to the prosecution and resolving credibility conflicts in favor of the verdict, we find that the prosecutor met his burden of disproving self-defense beyond a reasonable doubt. The evidence revealed that defendant informed Stringer that the motorcycle was being followed. Defendant's first action toward the

Lexus was to use deadly force as the vehicles turned onto Masonic Avenue. Defendant raised his gun and shot at Levinsky and Sgroi. While defendant relies on Stringer's testimony to argue that he had an honest and reasonable belief that he was in imminent danger from being hit by the Lexus, Stringer never testified that he was in fear for his life when the motorcycle and Lexus turned onto Masonic. He acknowledged that the vehicles were close together, approximately four feet apart, and testified that he was scared of the unknown. He did not know if the Lexus was going to hit them. Other than the fact that the vehicles were close together, there was no evidence that an assault was perpetrated against defendant.

Defendant further argues that, because the evidence was insufficient to prove the predicate felony of assault with intent to commit murder, the attendant felony-firearm convictions must be reversed. Because we affirm the assault with intent to commit murder convictions, we find no merit to defendant's argument. Moreover, there was overwhelming evidence that defendant possessed a Glock firearm during the commission of the underlying felonies for which he was convicted. MCL 750.227b.

Defendant also argues that the evidence was insufficient to sustain his conviction for discharge of a weapon from a motor vehicle. MCL 750.234a(1) generally provides that an individual who intentionally discharges a firearm from a motor vehicle in such a manner as to endanger the safety of another individual is guilty of a felony. MCL 750.234a(3) states, however, that subsection (1) does not apply to an individual who discharges a firearm in self-defense. Defendant does not dispute that he discharged a weapon from the motorcycle or that he endangered the safety of those riding in the Lexus. Rather, he argues that the prosecutor did not disprove his theory of self-defense beyond a reasonable doubt. We reject that argument for the reasons previously discussed. We therefore affirm defendant's conviction under MCL 750.234a.

Finally, defendant argues that he was denied his right of confrontation when the trial court refused to allow him to elicit testimony that Stringer avoided a life sentence by testifying against him. This issue is not preserved because defendant never raised an issue with respect to the Confrontation Clause at trial. See *People v Coy*, 258 Mich App 1, 12; 669 NW2d 831 (2003) (an objection on another ground is insufficient to preserve an objection under the Confrontation Clauses of the federal and state constitutions, US Const Am VI; Const 1963, art 1, § 20). We review unpreserved constitutional issues for plain error affecting a defendant's substantial rights. *Carines, supra* at 763-764.

In reviewing this issue, we find that defendant misrepresents the record. During opening statement, defense counsel informed the jury that Stringer was planning to testify against defendant, that Stringer "too" was charged with assault with intent to murder, and that he bargained to avoid that charge. Defense counsel then stated that Stringer was looking at "hundreds of months" in the Department of Corrections if convicted and had the potential of receiving "life in prison," and life in prison means life in prison under these circumstances. The record does not support defendant's argument that he was improperly prohibited from asking whether Stringer faced a life sentence. Rather, defendant was appropriately prohibited from asking questions that would have provided the jury with knowledge that the charge of assault with intent to commit murder carried a possible life sentence.

The rule in Michigan has always been that neither the court nor counsel should address themselves to the question of the disposition of a defendant after the verdict. Indeed, it is proper for the court to instruct the jury that they are not to speculate upon such matters, and that they are to confine their deliberations to the issue of guilt or innocence. [*In re Spears*, 250 Mich App 349, 352; 645 NW2d 718 (2002), quoting *People v Szczytko*, 390 Mich 278, 285; 212 NW2d 211 (1973).]

Under this general rule, references to the disposition of the accused after the verdict are prohibited throughout the entire trial process. *Id.*

We additionally note that “[o]ur Supreme Court has held that the scope of cross-examination on matters of credibility is left to the sound discretion of the trial court.” *People v Von Everett*, 156 Mich App 615, 623; 402 NW2d 773 (1986), quoting *People v Bouchee*, 400 Mich 253, 267; 253 NW2d 626 (1977).

Neither the Sixth Amendment’s Confrontation Clause nor due process confers on a defendant an unlimited right to cross-examine on any subject. Cross-examination may be denied with respect to collateral matters bearing only on general credibility . . . as well as on irrelevant issues. [*People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992) (citations omitted).]

While defendant was not allowed to correlate the penalty of a life sentence to a charge of assault with intent to commit murder, he was permitted to elicit testimony that Stringer entered into a plea deal for his testimony, which relieved him from the possibility of serving a “significant” amount of time in prison. The jury was made aware of Stringer’s potential bias and credibility issues. The limitation on cross-examination was supported by law, was not an abuse of discretion, and does not constitute plain error. *Carines, supra*.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis